

**Wednesday, September 10, 2003**

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 11:00 a.m., with Ms. Migden, Chairwoman, Mr. Leonard and Mr. Chiang present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

### **LEGAL APPEALS MATTERS, CONSENT**

The Board deferred consideration of the following matters: *Ozone Productions, LTD, 89000098650, Olivia Beren, 89000965750; McDonnell Douglas Corporation, 106386; L.S.M.G. Corporation, 142128; and Porterville Ready Mix, Inc., 145627.*

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish absent, the Board made the following orders:

**Mohammad S. Kashe, 15158, 37009, 89000121120**

7-1-92 to 9-30-96, \$00.00 Tax, \$00.00 Penalty, Negligence

10-1-96 to 12-31-98, \$00.00 Tax, \$00.00 Penalty, Negligence

7-1-97 to 9-30-97, \$00.00 Tax

Action: Deny the petition for rehearing as recommended by the Appeals Division.

**Ozone Productions, LTD, 89000098650**

**Olivia Beren, 89000965750**

7-1-94 to 6-30-97, \$15,091.74 Tax, \$00.00 Failure to File Penalty

1-1-91 to 12-31-97, \$2,373.89 Tax, \$237.45 Failure to File Penalty

Action: The Board deferred consideration of this matter.

**Quality House Envelopes & Printing Specialty, Inc., 61228**

1-1-96 to 12-31-98, \$16,502.93 Tax, \$00.00 Negligence Penalty

Action: Deny the petition for rehearing as recommended by the Appeals Division.

**McDonnell Douglas Corporation, 106386**

1-1-95 to 2-31-97, \$1,963,420.55 Tax

Action: The Board took no action.

**Don M. and Lola Ella Williams, 89000078100**

4-1-92 to 9-30-95, \$3,934.51 Tax

Action: Redetermine as recommended by the Appeals Division.

**Metal Edge, Inc., 158218**

10-1-98 to 9-30-01, \$3,746.76 Protested Interest

Action: Redetermine as recommended by the Appeals Division.

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Vahid Shamoil, 162977

1-1-98 to 12-31-00, \$4,617.84 Tax, \$504.44 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Bighan Melek-Shalom, 161815

4-1-98 to 2-17-01, \$14,248.04 Tax, \$1,424.80 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

L.S.M.G. Corporation, 142128

10-1-97 to 8-12-00, \$148,308.50 Tax, \$6,163.84 Failure to File Penalty, \$26,716.77 Negligence Penalty

Action: The Board took no action.

Nemorio Gonzalez Romo, 144846

1-1-98 to 12-31-00, \$32,605.56 Tax, \$3,260.57 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Business Furniture Solutions, LLC, 99807

10-1-97 to 12-31-98, \$00.00 Tax, \$10,132.20 Failure to File Penalty

Action: Redetermine as recommended by the Appeals Division.

Gonluco, Inc., 91759

4-1-96 to 12-31-98, \$86,530.70 Tax, \$10,496.85 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Seidenader Equipment, Inc., 89521

1-1-93 to 12-31-98, \$7,923.47 Tax, \$00.00 Failure to File and Failure to Timely Pay Penalties

Action: Redetermine as recommended by the Appeals Division.

R. Carlton Enterprises, Inc., 79792

1-1-98 to 2-28-98, \$4,609.00 Tax

Action: Redetermine as recommended by the Appeals Division.

Marvin and Karen Reed, 155695

1-3-02, \$11.16 Tax, \$500.00 Failure to Obtain a Permit Penalty

Action: Redetermine as recommended by the Appeals Division.

Porterville Ready Mix, Inc., 145627

1-1-98 to 12-31-00, \$12,764.56 Tax

Action: The Board deferred consideration of this matter.

Textile Graphics Unlimited, Inc., 30867

10-1-90 to 3-31-97, \$00.00 Tax, \$1,018.75 Failure to File Penalty

Action: Redetermine as recommended by the Appeals Division.

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American Cyanamid Company, 97981

4-1-94 to 12-31-97, \$00.00 Tax, \$00.00 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

Rodolfo S. and Mercedes M. Suarez, 89002150690

1-1-93 to 12-31-95, \$38,701.45 Tax

Action: Redetermine as recommended by the Appeals Division.

Deltec Electronics Corporation, 91345

1-1-96 to 3-31-99, \$98,245.27 Tax

Action: Redetermine as recommended by the Appeals Division.

New-Val Ford, 89000067010, 89000067360

4-1-92 to 12-31-93, \$00.00 Tax, \$00.00 Negligence Penalty

Val New Lincoln Mercury, 89000090160, 89000090170

4-1-90 to 6-30-93, \$00.00 Tax

Action: Redetermine as recommended by the Appeals Division.

Ossam Younise Shaba, 222948

May 21, 2003 Notice of Seizure and Forfeiture

Action: Determined the staff properly seized the cigarettes.

#### **CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT**

The Board deferred consideration of the following matter: *Brian Zuchowski, 201813.*

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish absent, the Board made the following orders:

Alaric Albisco, 186187

1998, \$2,715.04 Assessment

Action: Reverse the action of the Franchise Tax Board.

Jill Feder-Kahlow, 207681

2000, \$660.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Juan Felipe Orrego, 207233

2000, \$999.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Brad J. and Lori R. Smith, 187191

1991, \$264.00 Tax, \$100.00 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board.

Southern California Surgery Centers, 193964

1995, \$917.29 Claim for Refund

1996, \$1,317.91 Claim for Refund

1997, \$65.82 Claim for Refund

1998, \$1,130.45 Claim for Refund

Action: Modify the action of the Franchise Tax Board.

Henry Tatian, 202279

2000, \$185.06 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Brian Zuchowski, 201813

1997, \$1,169.00 Assessment

Action: The Board deferred consideration of this matter.

Brice M. and Rebecca O'Bannon, 172422

1998, \$1.00 or more Assessment

Action: Deny the petition for rehearing.

#### **HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT**

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish absent, the Board made the following orders:

Socorra Abernathy, 190525

2000, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Irene Aguilar, 190518

2000, \$600.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Julian F. Aldon, 188774

2002, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Emanuel Babajan, 195559

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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**Charles L. Baker, III, 191672**

2002, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Zelda Bamm, 198461**

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Marion E. Batchelor, 188666**

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Joe C. Beverly, 198290**

2002, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Tyrae Biddle, 195778**

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Johnnie C. Brown, 193468**

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Michael D. Brumett, 193939**

2002, \$348.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Bernice Crawley, 193423**

1999, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Katharine Djerahian, 201758**

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Huong Do, 201693**

2002, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**Rodger Dorsett, 206144**

2002, \$312.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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Helda Fiddleman, 198538

2002, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Victorio Z. Marquez, Jr., 208113

2002, \$347.50 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Paula E. Pfister, 174471

1998, \$240.00 Claim for Credit

1999, \$240.00 Claim for Credit

Action: Deny the petition for rehearing.

Gail Y. Taylor, 165067

2001, \$1.00 or more Claim for Credit

Action: Deny the petition for rehearing.

**SALES AND USE TAX MATTERS, REDETERMINATIONS AND DENIALS OF CLAIMS  
FOR REFUND, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations and Denials of Claims for Refund, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish absent, the Board made the following orders:

American Home Products Corp., 196314

7-1-98 to 6-30-01, \$73,648.80

Action: Approve the redetermination as recommended by staff.

Yaskawa Electric America, Inc., 196704

10-1-98 to 9-30-01, \$146,676.93

Action: Approve the redetermination as recommended by staff.

Niro Atomizer, Inc., 196500

4-1-98 to 3-31-01, \$517,642.74

Action: Approve the redetermination as recommended by staff.

Bay Area/Diablo Petroleum Co., 187308

4-1-97 to 6-30-00, \$70,834.16

Action: Approve the redetermination as recommended by staff.

Electrograph Systems, Inc., 165746

1-1-98 to 12-31-00, \$276,768.48

Action: Approve the redetermination as recommended by staff.

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Lee Wayne Corporation, 186703

7-1-99 to 7-29-01, \$209,859.94

Action: Approve the redetermination as recommended by staff.

American Business Equipment, Inc., 206851

10-1-99 to 3-31-00, \$58,284.17

Action: Approve the redetermination as recommended by staff.

Ralphs Grocery Company, 224815

1-30-95 to 4-26-98, \$62,469.48

Action: Approve the denial of claim for refund as recommended by staff.

Wells Fargo Bank, 89000263540

1-1-97 to 3-31-97, \$148,340.00

Action: Approve the denial of claim for refund as recommended by staff.

The Pacific Marketing Group, 225086

4-1-99 to 12-31-01, \$172,210.60

Action: Approve the denial of claim for refund as recommended by staff.

Quebecor World (USA) Inc., 223028

10-1-95 to 9-30-98, \$387,092.39

Action: Approve the denial of claim for refund as recommended by staff.

Corning Cable Systems LLC, 224202

10-1-00 to 12-31-00, \$321,401.91

Action: Approve the denial of claim for refund as recommended by staff.

# **SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT**

The Board deferred consideration of the following matter: *Coherent, Inc., 225019.*

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish absent, the Board made the following orders:

Chairwoman Migden requested staff to report on *Coherent, Inc., 225019*, which was pulled from this consent agenda.

Omni Plastics, Inc., 160716

7-1-98 to 12-31-00, \$78,161.56

Action: Approve the credit and cancellation as recommended by staff.

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**Bank of America NT & SA, 222556**

1-1-01 to 12-31-01, \$1,309,691.93

Action: Approve the credit and cancellation as recommended by staff.

**Coherent, Inc., 225019**

10-1-02 to 12-31-02, \$114,974.19

Action: The Board deferred consideration of this matter.

**Comdisco, Inc., 223447**

7-1-98 to 7-15-01, \$774,127.00

Action: Approve the credit and cancellation as recommended by staff.

**Madeira Woodworking Company LLC, 224820**

10-1-01 to 12-31-01, \$58,926.45

Action: Approve the credit and cancellation as recommended by staff.

**California Color Corporation, 89000012410**

1-1-95 to 12-31-00, \$418,777.71

Action: Approve the refund as recommended by staff.

**Premiere House, Inc., 222782**

7-1-96 to 6-30-99, \$505,775.71

Action: Approve the refund as recommended by staff.

**HR Textron Inc., 221632**

1-1-98 to 12-31-00, \$214,818.70

Action: Approve the refund as recommended by staff.

**Lockheed Federal Credit Union, 222055**

1-1-01 to 12-31-02, \$64,735.56

Action: Approve the refund as recommended by staff.

**Premier America Credit Union, 196372**

1-1-01 to 12-31-01, \$87,623.31

Action: Approve the refund as recommended by staff.

**Ogdemli/Feldman Design, 168656**

1-1-99 to 12-31-01, \$84,463.39

Action: Approve the refund as recommended by staff.

**Ralphs Grocery Company, 146430**

1-30-95 to 4-26-98, \$174,048.43

Action: Approve the refund as recommended by staff.



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Cisco Systems, Inc., 206735

1-1-02 to 6-30-02, \$970,225.89

Action: Approve the refund as recommended by staff.

The Pacific Marketing Group, 183212

4-1-99 to 12-31-01, \$57,183.15

Action: Approve the refund as recommended by staff.

California Casualty Management Co., 184595

10-1-00 to 12-31-02, \$80,233.62

Action: Approve the refund as recommended by staff.

Alta Bates Summit Medical Center, 198022

4-1-02 to 9-30-02, \$63,084.30

Action: Approve the refund as recommended by staff.

C.G.J. Inc., 211736

4-1-02 to 6-30-02, \$59,505.24

Action: Approve the refund as recommended by staff.

TUT Systems, Inc., 212959

1-1-99 to 12-31-01, \$54,167.28

Action: Approve the refund as recommended by staff.

Press-Enterprise Company, 181663

4-1-99 to 6-30-99, \$169,661.73

Action: Approve the refund as recommended by staff.

Merant, Inc., 214207

4-1-02 to 6-30-02, \$96,070.30

Action: Approve the refund as recommended by staff.

San Jose Mercury News, Inc., 119495

1-1-98 to 12-31-02, \$482,438.88

Action: Approve the refund as recommended by staff.

Pacific Network Supply, 143616

10-1-00 to 3-31-02, \$85,272.39

Action: Approve the refund as recommended by staff.

Fujitsu Network Communication, Inc., 196293

4-1-01 to 6-30-01, \$120,152.41

Action: Approve the refund as recommended by staff.

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**Ogden Entertainment, Inc., 223251**

10-1-01 to 12-31-01, \$806,228.10

Action: Approve the refund as recommended by staff.

**Olympus America, Inc., 168655**

1-1-99 to 12-31-00, \$1,313,233.16

Action: Approve the refund as recommended by staff.

**Chrysler Financial Corp., 222557**

4-1-97 to 12-31-98, \$1,844,452.83

Action: Approve the refund as recommended by staff.

**CIT Technologies Corporation, 157163**

1-1-99 to 3-31-02, \$64,637.76

Action: Approve the refund as recommended by staff.

**Quebecor World (USA), Inc., 130323**

10-1-95 to 9-30-98, \$873,913.83

Action: Approve the refund as recommended by staff.

**Wayne-Dalton Corporation, 132071**

1-1-98 to 6-30-01, \$249,279.55

Action: Approve the refund as recommended by staff.

**Kern River Gas Transmission Co., 224720**

1-1-03 to 3-31-03, \$815,589.02

Action: Approve the refund as recommended by staff.

**Banctec Third Party Maintenance, Inc., 213935**

7-1-01 to 9-30-01, \$427,113.75

Action: Approve the refund as recommended by staff.

**Maruchan, Inc., 143721**

7-1-98 to 9-30-01, \$143,508.92

Action: Approve the refund as recommended by staff.

**Michael S. Blower, 157945**

11-12-96, \$66,519.87

Action: Approve the refund as recommended by staff.

**Geary's LLC, 213372**

7-1-02 to 12-31-02, \$172,857.13

Action: Approve the refund as recommended by staff.

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**Transmeta Corporation, 130621**

3-1-98 to 12-31-01, \$458,775.26

Action: Approve the refund as recommended by staff.

**Corning Cable Systems LLC, 136403**

1-1-99 to 12-31-01, \$328,404.79

Action: Approve the refund as recommended by staff.

**CCH Incorporated, 144966**

7-1-99 to 6-30-00, \$233,073.99

Action: Approve the refund as recommended by staff.

**Terawave Communications, Inc., 183233**

10-1-99 to 12-31-01, \$422,837.47

Action: Approve the refund as recommended by staff.

**Niagara Bottling LLC, 214590**

1-1-00 to 12-31-00, \$85,152.81

Action: Approve the refund as recommended by staff.

**GOR Acquisition Corp., 215122**

10-1-02 to 12-31-02, \$83,530.13

Action: Approve the refund as recommended by staff.

**WFS Financial, Inc., 212388**

10-1-02 to 12-31-02, \$1,410,272.19

Action: Approve the refund as recommended by staff.

**GE Transportation Systems Global Signaling, 194146**

4-1-02 to 6-30-02, \$161,661.25

Action: Approve the refund as recommended by staff.

**Lucky Stores, Inc., 37030**

11-2-97 to 1-30-99, \$8,218,657.73

Action: Approve the refund as recommended by staff.

**Travis Credit Union, 224396**

7-1-00 to 6-30-02, \$263,509.81

Action: Approve the refund as recommended by staff.

**Marshall Design Associates, Inc., 51285**

10-1-96 to 6-30-01, \$530,323.91

Action: Approve the refund as recommended by staff.

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**Hanson Lab Furniture, Inc., 222780**

10-1-99 to 9-30-02, \$67,209.49

Action: Approve the refund as recommended by staff.

**Terayon Corporation, 222054**

1-1-99 to 12-31-01, \$144,473.91

Action: Approve the refund as recommended by staff.

**Best Buy Store LP, 119013**

11-18-95 to 12-31-98, \$2,056,694.99

Action: Approve the refund as recommended by staff.

**Jenny Craig Products, Inc., 198639**

1-1-00 to 9-30-02, \$60,248.85

Action: Approve the refund as recommended by staff.

**DNS Electronics, LLC, 183219**

10-1-01 to 3-31-02, \$99,865.59

Action: Approve the refund as recommended by staff.

**Americredit Financial Service, Inc., 213336**

10-1-02 to 12-31-02, \$1,778,620.90

Action: Approve the refund as recommended by staff.

**Westlake Services, Inc., 217745**

10-1-02 to 12-31-02, \$54,786.16

Action: Approve the refund as recommended by staff.

**B.L.J. Financial Service Corporation, 225275**

1-1-00 to 12-31-02, \$51,089.04

Action: Approve the refund as recommended by staff.

**Champion Financial Service, Inc., 207706**

7-1-97 to 12-31-02, \$184,072.00

Action: Approve the refund as recommended by staff.

**Z Manufacturing, Inc., 222555**

10-1-99 to 9-30-02, \$63,128.56

Action: Approve the refund as recommended by staff.

**Fidelity Funding, Inc., 221947**

1-1-97 to 3-31-02, \$117,205.33

Action: Approve the refund as recommended by staff.

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**SPECIAL TAXES MATTERS, REFUNDS, CONSENT**

With respect to the Special Taxes Matters, Refunds, Consent Agenda, upon a single motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish absent, Ms. Mandel not participating in accordance with Government Code section 7.9 on *Ultramar, Inc., 141631; The Chalone Wine Group, LTD., 212867; Amerin Guaranty Corporation, 203256; United Investors Life Insurance Company, 214820; Acacia National Life Insurance Company, 214821; and, Ohio National Life Insurance Company, 216494*, the Board made the following orders:

Yosemite Concession Services Corp., 158379

1-1-00 to 12-31-02, \$68,946.33

Action: Approve the refund as recommended by staff.

Ultramar, Inc., 141631

7-1-99 to 5-31-00, \$317,596.69

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

The Chalone Wine Group, LTD., 212867

4-1-00 to 12-31-02, \$445,108.96

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Amerin Guaranty Corporation, 203256

1-1-01 to 12-31-01, \$523,725.30

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

United Investors Life Insurance Company, 214820

1-1-98 to 12-31-98, \$76,137.39

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Acacia National Life Insurance Company, 214821

1-1-98 to 12-31-98, \$154,886.63

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Ohio National Life Insurance Company, 216494

1-1-01 to 12-31-01, \$1,057,600.04

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

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**SALES AND USE TAX APPEALS HEARINGS**

Phillip Cutler, 29001

1-1-93 to 6-30-98, \$13,744.40 Tax, \$1,374.44 Negligence Penalty

Doris Cutler, 28800

1-1-93 to 6-30-98, \$13,744.40 Tax, \$1,374.44 Negligence Penalty

For Petitioner:

Phillip Cutler

For Sales and Use Tax Department:

Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues:

Whether petitioner was an owner of the business in question.

Whether the audited amount of nontaxable sales for resale should be increased.

Whether petitioner should be relieved of interest in the amount of \$4,280.48 due

to the actions of Board employees during the appeals process from July 1999 through March 2001.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered to cancel the negligence penalty and allow 73.385 percent of claimed sales for resale as non-taxable.

Clark/Kent Enterprises, Inc., 173868

7-1-98 to 6-30-01, \$00.00 Tax

For Petitioner:

Deborah Clark, Representative

For Sales and Use Tax Department:

Chris Schutz, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue:

Whether interest assessed based upon underreported sales and use tax may be abated.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Eclipse Shutter Company, 170189

4-1-98 to 3-31-01, \$42,923.21 Tax

For Petitioner:

Nancy Engilman, Representative

Jack Engilman, Representative

For Sales and Use Tax Department:

Chris Schutz, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue:

Whether petitioner is entitled to relief of tax and interest due on the sale of custom wood shutters it incorrectly claimed as sales for resale based on petitioner's assertion that it relied on erroneous oral advice from the Board.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

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Thomas J. Rice, 196576

1-8-02 6-30-02, \$5,792.00 Tax

For Petitioner:

Thomas Rice

For Sales and Use Tax Department:

Warren L. Astleford, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the evidence establishes that the petitioner did not purchase the subject vehicle for use in California.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

R Kids Tire & Service, Inc., 158420

10-1-98 to 6-30-01, \$169,164.66 Tax

For Petitioner:

Graham K. Hoad, Representative

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has provided sufficient evidence to establish that the audited understatement of taxable sales for the third quarter 1999 is excessive.

Whether the audited allowance for bad debts is sufficient.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Color Marble, Inc., 163978

10-1-97 to 9-30-00, \$9,369.52 Tax

For Petitioner:

Si Lau, CPA

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the statistical sampling plan conducted by the Department was a proper procedure to establish the measure of tax.

Whether the measure of tax established by statistical sampling should have been computed using the attribute method instead of the variable method.

Whether the evidence shows that petitioner made exempt and/or nontaxable sales in the first quarter 1998 and second quarter 1998.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Palladium Investors, Inc., et al., 89002254320

10-1-94 to 9-30-97, \$24,159.76 Tax

Palladium Investors, Ltd., 154916

4-1-98 to 3-31-01, \$34,649.99 Tax

For Petitioner:

Mica Miyamoto, CPA

Alan Shuman, Petitioner

**Wednesday, September 10, 2003**

For Sales and Use Tax Department: Trecia Nienow, Tax Counsel  
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.  
Issues: Whether petitioner is responsible for tax regarding the sales of T-shirts and other merchandise made inside the Hollywood Palladium building.  
As to case 154916, whether petitioner received misinformation qualifying for relief from the tax within the meaning of Revenue and Taxation Code section 6596.  
Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the petition be submitted for decision.

**L.A. Mattress, Inc., 129840**

1-1-97 to 12-31-99, \$41,991.03 Tax, \$4,199.11 Negligence Penalty  
For Petitioner: W. Rod Stern, Attorney  
For Sales and Use Tax Department: Sharon Jarvis, Tax Counsel  
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.  
Issue: Whether the Board's motion on December 4, 2002 to "redetermine and reduce the amount by 2.6135 percent" intended to reduce the measure of tax to \$1,211,386 or \$673,321.  
Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**Wayne Louis and Carol Knyal, 107131**

3-25-99, \$33,082.50 Tax  
For Petitioner: Rob Francais, Representative  
For Sales and Use Tax Department: Trecia Nienow, Tax Counsel  
Contribution Disclosures pursuant to Government Code section 15626: A disqualifying contribution was disclosed to Mr. Westly. No other disqualifying contributions were disclosed.  
Issue: Whether the transfer of the aircraft to petitioners qualifies for the occasional sale exemption under California Code of Regulations, Title 18, section 1595, subdivision (c).  
Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Mr. Westly absent, the Board ordered that the petition be submitted for decision.

**Charlie Edward Diaz, 163975**

7-1-98 to 8-15-01, \$12,004.46 Tax, \$1,207.27 Negligence Penalty  
For Petitioner: Carlos Diaz, Taxpayer  
Bela Diaz, Witness  
Ray Loo, Representative  
For Sales and Use Tax Department: Sandy McCaleb, Hearing Representative  
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.  
Issues: Whether the evidence establishes that petitioner's gross receipts were understated.  
Whether the evidence establishes that the disallowed deductions for exempt sales of food and bad debts are excessive.



Wednesday, September 10, 2003

Whether the audited understatement resulted from negligence.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 1:00 p.m. and reconvened at 2:00 p.m. with Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel present.

**Acknowledge Information & Systems Inc., 119153, 170818**

1-1-98 to 6-30-98, \$53,141.81 Tax, \$5,314.18 Penalty

7-1-98 to 3-31-00, \$213,087.82 Tax, \$21,308.80 Penalty

For Petitioner: John J. Lee, CPA

John Gee, Consultant

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the audit methodology produced an accurate reflection of unreported taxable sales.

Whether the Sales and Use Tax Department violated petitioner's right of confidentiality by photocopying its records and showing them to petitioner's customers.

Whether the negligence penalty should be abated.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**Sunnystone Technology Inc., 151015**

1-1-98 to 12-31-00, \$157,367.51 Tax, \$15,736.74 Negligence Penalty

For Petitioner: John Gee, Consultant

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the evidence establishes that the audited understatement of taxable measure is excessive.

Whether the applicable waiver of the statute of limitations is valid.

Whether the evidence establishes that petitioner was negligent.

Whether relief from interest is warranted.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**Lo-Car Enterprises Inc., 78694**

4-1-96 to 3-31-99, \$21,975.81 Tax, \$00.00 Penalty

For Petitioner: Alexander Anguiano, CPA

Lawrence D. Lobach, President

For Sales and Use Tax Department: Sandy McCaleb, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

**Wednesday, September 10, 2003**

Issue: Whether the audited understatement of the measure of tax is excessive.  
Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**First Fire Systems Inc., 166239**

1-1-94 to 6-30-01, \$117,624.03 Tax, \$00.00 Penalty

For Petitioner: Elias Farah, CPA  
Robbie Kashani, Vice President  
For Sales and Use Tax Department: Warren L. Astleford, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether there is legal justification for reduction of the determined tax.  
Action: Upon motion of Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division. The Board directed staff to offer petitioner a 2-year payment plan.

**Paramjit and Charanjit Deol, 168674**

7-1-97 to 6-30-00, \$15,805.97 Tax

For Petitioner: Paramjit Deol, Owner  
Ki O. Kim, Representative  
For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the evidence shows that the audited markups for fuel and propane are excessive.  
Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**BFWW Incorporated, 154627, 145830**

10-1-98 to 9-30-01, \$3,245.23 Tax, \$00.00 Penalty

For Petitioner: Ward R. Nyhus, Jr., Attorney  
Bill Whitten, President  
For Sales and Use Tax Department: Jeffrey H. Graybill, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the service fees and design fees are excludable from gross receipts.  
Action: Upon motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel abstaining, the Board ordered that the petition be granted.

The Board Members requested the Appeals Division to prepare a letter to the taxpayer advising them that the Board's decision took into account that this was their first audit and the taxpayer should not interpret that decision to mean that the taxpayer may continue to exclude from its measure of tax certain components of taxpayer's taxable gross receipts, and that the taxpayer must report tax on its full gross receipts.

Wednesday, September 10, 2003

MacArthur Business Credit, LLC, 183261

1-1-98 to 12-31-00, \$2,342.82 Tax

For Petitioner:

Graham K. Hoad, Representative

For Sales and Use Tax Department:

Chris Schutz, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the evidence establishes that a transaction between petitioner and VenServ, Inc. was a sale within the meaning of Revenue and Taxation Code section 6006.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Sumo Foods Group Incorporated, 183964

4-1-98 to 3-31-01, \$13,744.78 Tax

For Petitioner:

Graham K. Hoad, Representative

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the evidence shows that the bank reconciliation credit balance at the Long Beach location represents amounts erroneously deposited into other location accounts.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be submitted for decision.

Brian Nguyen, 127822

1-1-96 to 4-30-00, \$77,238.54 Tax, \$7,723.84 Penalty

For Petitioner:

Graham K. Hoad, Representative

Brian Nisenholtz, Representative

Roderick Calub, Representative

Brian Nguyen

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the evidence establishes that petitioner's reported gross receipts were understated.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Mike Xing Lin, 151009

7-28-97 to 2-16-01, \$27,314.95 Tax, \$6,828.78 Fraud Penalty

Yue Sun, 181680

7-28-97 to 2-16-01, \$27,234.95 Tax, \$6,828.78 Fraud and \$2,731.20 Finality Penalties

For Petitioner:

Wynn Kwok, Representative (for Mike Lin)

Scott A. Zimmon, Representative (for Yue Sun)

Yue Sun

**Wednesday, September 10, 2003**

For Sales and Use Tax Department: Jeffrey H. Graybill, Tax Counsel  
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.  
Issues: Whether petitioner Mike Xing Lin (151009) should be relieved of the tax liability because he was not a partner.  
Whether the audited amount of taxable sales is excessive.  
Whether the fraud penalty was properly assessed.  
Whether relief from the penalty for failure to timely pay the determination (finality penalty) is warranted (181680).  
Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**National Film Laboratories, Inc., 89000013400**

7-1-93 to 12-31-96, \$146,689.53 Tax

For Petitioner: David L. Gangloff, Jr., Representative  
For Sales and Use Tax Department: Jeffrey H. Graybill, Tax Counsel  
Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.  
Issue: Whether the evidence establishes that the audited sales of videotapes qualified as exempt sales of property exported to a foreign country.  
Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**Advanced Communications Cabling, Inc., 141541**

1-1-98 to 6-30-00, \$23,917.30 Tax

For Petitioner: Rodney W. Hanson, Former President  
Suzanne M. Hanson, Former Office Manager  
For Sales and Use Tax Department: Kevin Hanks, Hearing Representative  
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.  
Issue: Whether the evidence establishes that the prime contractors reported and paid the applicable tax with respect to materials installed by petitioner in performance of construction contracts.  
Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**Enrique Gonzalez, et al., 134946**

4-1-98 to 12-31-99, \$21,867.32 Tax, \$00.00 Penalty

For Petitioner: Jonathan F. Gallardo, Representative  
For Sales and Use Tax Department: Sandy McCaleb, Hearing Representative  
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.  
Issues: Whether the evidence establishes that the pilferage allowance should be increased.

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Whether the evidence shows that audited taxable sales are excessive.

Whether petitioner is entitled to an exemption for sales of taxable merchandise paid for by food stamps.

Whether petitioner is entitled to make a settlement offer under the circumstances of this case.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**Kwang Hoon Lee, 157315**

4-1-97 to 12-31-99, \$31,497.07 Tax, \$3,181.18 Negligence Penalty

For Petitioner: David Kim, CPA

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the evidence shows that the audited costs of alcohol sold are excessive.

Whether the evidence shows that the audited taxable markup for alcohol is excessive.

Whether the negligence penalty should be abated.

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard duly carried, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Ms. Migden voting no, the Board ordered that the negligence penalty be deleted and submitted the remainder for decision.

**Hotlines Unlimited, Inc., 157314, 164794**

**Steven B. Warner, 164580, 164789**

**Andrea Warner, 166777, 166778**

7-1-93 to 6-30-96, \$18,431.90 Tax, \$42,369.49 Fraud Penalty

7-1-96 to 9-30-98, \$24,842.65 Tax, \$54,235.84 Fraud Penalty

10-1-98 to 6-30-99, \$00.00 Tax, \$00.00 Negligence Penalty

For Petitioner: Andrea Warner

Steven B. Warner

For Sales and Use Tax Department: Warren L. Astleford, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Department properly assessed the fraud penalty and imposed interest.

Whether petitioners received, and reasonably relied upon, erroneous written advice from the Board so that they are entitled to relief under Revenue and Taxation Code section 6596.

Whether the dual determinations issued against Mr. and Mrs. Warner for the period of July 1, 1993 to June 30, 1996 and for the period of July 1, 1996 to June 30, 1998 were valid.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Wednesday, September 10, 2003

Office Furniture L.A., Incorporated, 140910

1-1-98 to 6-30-00, \$00.00 Tax, \$17,566.59 Fraud Penalty

For Petitioner:

Frank Denkins, Manager

Elaine Proby, Accountant

For Sales and Use Tax Department:

Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the Department properly imposed the penalty for fraud or intent to evade the tax as provided by Revenue and Taxation Code section 6485 of the Sales and Use Tax Law.

Action: Mr. Parrish moved to reduce the fraud penalty to negligence penalty. The motion was seconded by Mr. Leonard but no vote was taken.

Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Todd C. Brooks, 142129

1-1-94 to 12-31-97, \$86,376.67 Tax, \$21,594.19 Fraud Penalty

For Petitioner:

David Noyes, Representative

Todd C. Brooks

For Sales and Use Tax Department:

Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the evidence establishes that audited understatement of taxable sales is overstated.

Whether the evidence establishes that the disallowed nontaxable sales for resale are excessive.

Whether petitioner has presented sufficient evidence to support the disallowed claimed exempt sales in interstate commerce.

Whether the amount of disallowed claimed nontaxable installation labor is excessive.

Whether the evidence establishes that the disallowed claimed nontaxable delivery charges are overstated.

Whether petitioner was fraudulent.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**SPECIAL TAXES APPEALS HEARINGS**

Jirayr Nersesyan, 92244

1-1-92 to 12-21-97, \$00.00 Fee, \$00.00 Negligence Penalty

Resource Properties Management Inc., 92429

12-22-97 to 12-31-99, \$00.00 Fee, \$00.00 Failure to File Penalty

For Petitioner:

Jirayr Nersesyan

For Property and Special Taxes Department:

M. Judith Nelson, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

**Wednesday, September 10, 2003**

Issue: Whether the Fuel Taxes Division's alleged delay in issuing a Notice of Determination that the Underground Storage Tank Maintenance Fee was due, is sufficient to relieve petitioners from the interest.

Action: Upon motion of Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

## **ADMINISTRATIVE SESSION**

### **BOARD COMMITTEE REPORTS**

#### **Business Taxes Committee**

Upon motion of Ms. Migden, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the August 6, 2003 Business Taxes Committee report (Exhibit 9.1).

### **PROPOSED 2003 BOARD MEETING DATE CHANGE**

Upon motion of Mr. Chiang, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board approved the November 2003 Board Meeting date change (Exhibit 9.2).

Exhibits to these minutes are incorporated by reference.

### **FINAL ACTION ON PETITIONS HEARD SEPTEMBER 10, 2003**

Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition of *Clark/Kent Enterprises, Inc., 173868*, be redetermined as recommended by the Appeals Division.

Mr. Chiang requested a notice be sent to taxpayers advising that the tax obligation is to the party that sells the item and not for a company like Disney Co. to claim that they will pay the tax directly to the Board of Equalization.

Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition of *Eclipse Shutter Company, 170189*, be redetermined as recommended by the Appeals Division.

Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition of *Thomas J. Rice, 196576*, be redetermined as recommended by the Appeals Division.

Wednesday, September 10, 2003

Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish abstaining, the Board ordered that the petition of *R Kids Tire & Service, Inc.*, 158420, be redetermined as recommended by the Appeals Division.

Upon motion of Ms. Migden, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Leonard, Mr. Chiang voting yes, Mr. Parrish and Ms. Mandel abstaining, the Board ordered that the petition of *Color Marble, Inc.*, 163978, be redetermined as recommended by the Appeals Division.

Ms. Migden moved to redetermine as recommended by the Appeals Division the petition of *Palladium Investors, Inc., et al.*, 154916, 89002254320. The motion was seconded by Ms. Mandel but failed to carry, Ms. Migden and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, Mr. Chiang not participating.

The Board deferred consideration of this matter.

Ms. Migden moved to redetermine as recommended by the Appeals Division the petition of *L.A. Mattress, Inc.*, 129840. The motion was seconded by Mr. Chiang. Mr. Parrish made a substitute motion to reduce the understatement to 3.8 percent. The substitute motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

Upon motion of Ms. Migden, seconded by Mr. Chiang and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Upon motion of Ms. Migden, seconded by Mr. Chiang and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Mr. Chiang voting yes, Ms. Mandel not participating, the Board ordered that the petition of *Wayne Louis and Carol Knyal*, 107131, be redetermined as recommended by the Appeals Division.

Upon motion of Mr. Parrish, seconded by Mr. Leonard and duly carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang voting no, the Board ordered that in the petition of *Charlie Edward Diaz*, 163975, the negligence penalty be canceled, otherwise redetermine as recommended by the Appeals Division.

Upon motion of Ms. Migden, seconded by Ms. Mandel and duly carried, Ms. Migden, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang voting no, the Board ordered that the petition of *Acknowledge Information & Systems Inc.*, 119153, 170818, be redetermined as recommended by the Appeals Division.

Ms. Migden moved to redetermine as recommended by the Appeals Division the petition of *Sunnystone Technology, Inc.*, 151015. The motion was seconded by Ms. Mandel. Mr. Leonard made a substitute motion to cancel the negligence penalty. The substitute motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.



**Wednesday, September 10, 2003**

Upon motion of Ms. Migden, seconded by Ms. Mandel and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Ms. Migden moved to redetermine as recommended by the Appeals Division the petition of *Lo-Car Enterprises Inc., 78694*. The motion was seconded by Mr. Chiang. Mr. Parrish made a substitute motion to reduce the understated measure of tax to 716,523.00. The substitute motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

Upon motion of Ms. Migden, seconded by Mr. Chiang and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Leonard voting no, Mr. Parrish abstaining, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that in the petition of *Paramjit and Charanjit Deol, 168674*, reduce the understatement of taxable sales for fuel sales by 50 percent and redetermine the remainder.

#### **SALES AND USE TAX APPEALS HEARING**

Solder Works Corporation, 167616

1-1-99 to 9-30-01, \$47,585.04 Tax

For Petitioner:

Appearance Waived

For Sales and Use Tax Department:

Randy Ferris, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the Sales and Use Tax Department correctly determined that petitioner's ex-tax purchases of manufacturing equipment were subject to use tax owed by petitioner rather than sales tax owed by the retailer.

Action: Upon motion of Ms. Migden, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

#### **FINAL ACTION ON PETITIONS HEARD SEPTEMBER 10, 2003**

Upon motion of Ms. Migden, seconded by Ms. Mandel and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board ordered that the petition of *MacArthur Business Credit, LLC, 183261*, be redetermined as recommended by the Appeals Division.

Upon motion of Mr. Leonard, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered the petitioner, *Sumo Foods Group Incorporated, 183964*, is entitled to half the credit difference established for the Long Beach location.

**Wednesday, September 10, 2003**

Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the audited understatement of taxable measure be reduced by 75 percent in the petition of *Brian Nguyen, 127822*.

Upon motion of Ms. Mandel, seconded by Ms. Migden and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition of *Mike Xing Lin, 151009*, and *Yue Sun, 181680*, be redetermined as recommended by the Appeals Division.

Mr. Parrish moved to grant the petition of *National Film Laboratories, Inc., 89000013400*. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

Upon motion of Ms. Migden, seconded by Ms. Mandel and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Ms. Mandel moved to redetermine as recommended by the Appeals Division the petition of *Advanced Communications Cabling, Inc., 141541*. The motion failed for lack of a second.

Upon motion of Ms. Migden, seconded by Mr. Parrish and duly carried, Ms. Migden, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang and Ms. Mandel voting no, the Board ordered to reduce the understatement of taxable measure by 50 percent.

Mr. Leonard and the Chairwoman requested staff to prepare a report on the Board of Equalization's education outreach program to educate construction contractors on the proper application of the sales and use tax. The report is to be back to the Board by the October 15, 2003 Board meeting.

Mr. Parrish moved to increase the pilferage allowance to 2 percent, otherwise redetermined as recommended by the Appeals Division in the petition of *Enrique Gonzalez, et al., 134946*. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

Upon motion of Ms. Migden, seconded by Ms. Mandel and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Leonard voting no, Mr. Parrish abstaining, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Upon motion of Ms. Migden, seconded by Ms. Mandel and unanimously carried, Ms. Migden, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board ordered that the petition of *Kwang Hoon Lee, 157315*, be redetermined as recommended by the Appeals Division.

**Wednesday, September 10, 2003**

Ms. Migden moved to redetermine as recommended by the Appeals Division the petition of *Hotlines Unlimited, Inc.*, 157314, 164794; *Steven B. Warner*, 164580, 164789; and, *Andrea Warner*, 166777, 166778. No vote was taken.

Upon motion of Ms. Mandel, seconded by Ms. Migden and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Mr. Parrish moved to reduce the fraud penalty to a negligence penalty, otherwise redetermine as recommended by the Appeals Division the petition of *Office Furniture L.A., Incorporated*, 140910. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Migden, Mr. Chiang and Ms. Mandel voting no.

Upon motion of Ms. Migden, seconded by Ms. Mandel and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Upon motion of Ms. Migden, seconded by Ms. Mandel and duly carried, Ms. Migden, Mr. Chiang and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board ordered that the petition of *Todd C. Brooks*, 142129, be redetermined as recommended by the Appeals Division.

Mr. Leonard requested that in appeals involving the fraud penalty, the information presented to the Board include details to the evidence supporting the penalty and not just evidence that the taxpayer plead no contest in a related criminal prosecution.

#### **FINAL ACTION ON PETITION HEARD SEPTEMBER 10, 2003**

Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Ms. Migden, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang abstaining, Ms. Mandel not participating, the Board ordered that the petition of *Jirayr Nersesyan*, 92244, and *Resource Properties Management Inc.*, 92429, be redetermined as recommended by the Appeals Division.

The Board directed staff to send a letter to the California Victim Compensation and Government Claims Board recommending favorable consideration of the request for relief filed by the taxpayer.

The Board adjourned at 5:35 p.m.

*The foregoing minutes are adopted by the Board on November 18, 2003.*

Note: The following cases were removed from the calendar prior to the meeting: *John R. and Gentry McCrea*, 172992; *Akira Sonomura*, 171771; *Gary D. Held*, 151692; *Robert Jesenski*, 151693; *H. Dan Hill*, 151694; and, *Alfiera A. and Maria V. Gigliotti*, 112112.